

## ***Matter 657-665 Fifth Avenue Tenants***

OATH Index Nos. 1278/14, 1279/14, 1280/14 (Dec. 14, 2015), *adopted*, Loft Bd. Order No. 4523 (May 19, 2016), **appended**  
[Loft Bd. Dkt. Nos. TR-1125, TR-1126, TR-1130;  
657-665 Fifth Avenue, Brooklyn, NY]

Parties stipulated that the requirements for coverage had been met, apart from the limited issue of whether the owner's rent control documentary evidence constituted a legal objection to the status of the requisite third unit for coverage. As set forth in a prior memorandum decision, owner failed to show the unit in issue was rent controlled. There being no legal objection to coverage, the coverage applications should be granted.

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### **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**657-665 FIFTH AVENUE TENANTS**  
*Applicant*

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### **REPORT AND RECOMMENDATION**

**KARA J. MILLER**, *Administrative Law Judge*

This case involves coverage applications filed with the Loft Board for buildings located at 657-659, 661, 663, 665, and 665A Fifth Avenue, Brooklyn, New York. Applicants Craig Tilford and Jamie Lee Johnsen live in the second floor unit of 657-659 Fifth Avenue. Applicant Gregory Nelson, who also lives in the second floor unit of 657-659 Fifth Avenue, filed a separate coverage application. The third application was submitted by Justin Johnson and Kelley Cribben, who reside in the third floor unit of 657-659 Fifth Avenue.

After extensive conferencing, the parties agreed by stipulation of facts submitted on March 11, 2015, that all elements of section 281(5) of the MDL for coverage were met. The owner, however, raised a legal objection by asserting that the building did not qualify for coverage because one of the three required units was in a rent-regulated status. The parties requested that this issue be adjudicated without a trial based upon the stipulation and documentary evidence. The parties submitted memoranda of law outlining their positions.

In a memorandum decision issued on October 30, 2015, I found that the owner failed to present a legal objection to coverage because it was unable to prove that Mr. Perez's first floor unit in 665A was in a rent-controlled status. This memorandum decision is incorporated herein by reference. Upon issuance of the decision, I ordered the parties to schedule a conference call with the conference judge, Administrative Law Judge Faye Lewis, to finalize the case. After conversations with the Judge Lewis, the parties requested that a report and recommendation be issued based upon the stipulation and the memorandum decision.

The parties had stipulated that the addresses 657, 661, 665, and 665A Fifth Avenue, Brooklyn, New York 11215 are a horizontal multiple dwelling and all of the criteria for coverage under section 281(5) of the Multiple Dwelling Law have been satisfied. The parties further stipulated that the five applicants qualify as the protected occupants of their units.

For the reasons articulated in my memorandum decision, the owner failed to prove that the first floor of 665A was in a rent-controlled status. Based upon the stipulated facts, and because the owner has failed to provide proof of a legal objection to coverage, I recommend that the applications for coverage be granted.

### **CONCLUSION**

Based on the foregoing, I recommend the units for coverage.

Kara J. Miller  
Administrative Law Judge

December 14, 2015

SUBMITTED TO:

**RICK D. CHANDLER, P.E.**  
*Commissioner*

APPEARANCES:

**MICHAEL STEPPER, ESQ.**  
*Attorney for the Applicants Tilford and Johnsen*

**DAVID E. FRAZER, ESQ.**

*Attorney for the Applicants Johnson and Cribben*

**WEEN & KOZEK LLP**

*Attorneys for the Applicant*

**BY: MICHAEL KOZEK, ESQ.**

**NORRIS MCLAUGHLIN & MARCUS**

*Attorneys for the Owner*

**BY: GERARD PROEFRIEDT, ESQ.**

**ORDER**

**NEW YORK CITY LOFT BOARD**

*In the Matter of the Applications of*

**657-665A FIFTH AVENUE TENANTS**

**Loft Board Order No. 4523**

**Docket No. TR-1125  
TR-1126  
TR-1130**

**RE: 657-665A Fifth Avenue  
Brooklyn, New York**

**IMD No. None**

**ORDER**

The New York City Loft Board accepts the Report and Recommendation dated December 14, 2015 ("Report") of Administrative Law Judge Kara J. Miller.

On October 2, 2013, Craig Tilford and Jamie Lee Johnsen, the occupants of the second floor in the building located at 657 Fifth Avenue, Brooklyn, New York, filed an application seeking coverage for their unit pursuant to § 281(5) of the Multiple Dwelling Law ("MDL"). The Loft Board docketed this application as TR-1126.

On October 4, 2013, Justin Johnson and Kelley Cribben, the occupants of the third floor in 657 Fifth Avenue, filed an application seeking coverage for their unit pursuant to MDL § 281(5) and protected occupant status. The Loft Board docketed this application as TR-1125.

On October 31, 2013, Gregory Nelson (collectively "Tenants"), an additional occupant of the second floor in 657 Fifth Avenue, filed an application seeking coverage for his unit pursuant to MDL § 281(5) and protected occupant status. The Loft Board docketed this application as TR-1130.

On December 13, 2013, 657-665 5<sup>th</sup> Avenue, LLC ("Owner"), the owner of the Building, filed an answer.

The Loft Board transferred the cases to the Office of Administrative Trials and Hearings, which assigned the cases to Administrative Law Judge Kara J. Miller for adjudication.

On March 11, 2015, Tenants and Owner entered into a stipulation ("Stipulation") agreeing to the following set of facts:

1. The buildings located at 657, 661, 665 and 665A Fifth Avenue, Brooklyn, New York are a horizontal multiple dwelling (hereinafter "Building");
2. The Building has been occupied for residential purposes as the residence or home of three or more families living independently from one another for a period of twelve consecutive months during the period commencing January 1, 2008 and ending December 31, 2009 ("Window Period");
3. The units that are the subject of the coverage applications meet all statutory eligibility requirements pursuant to MDL § 281(5) including but not limited to: the units are not located in a basement or cellar; each unit has at least one entrance that does not require passage through another residential unit to obtain access to the unit; each unit has at least one window opening onto a street or a lawful yard or court; and each unit is at least four hundred square feet in area;
4. 657 and 665A Fifth Avenue lack a certificate of occupancy pursuant to MDL § 301;

5. Tenants occupied their respective units on or before June 21, 2010, and subject to the Building qualifying for coverage, qualify as the protected occupants of their respective units; and
6. Walter Fernando Perez occupied a unit at the first floor of 665A Fifth Avenue, Brooklyn, New York during the Window Period for residential purposes;

The parties also agreed that the only legal issue remaining is whether the first floor unit at 665A Fifth Avenue, as the requisite third unit for a finding of coverage for the Building, is subject to rent control.

On October 30, 2015 Judge Miller issued a Memorandum Decision in which she found that Owner failed to prove the first floor unit at 665A Fifth Avenue was subject to rent control. On December 14, 2015, Judge Miller incorporated her findings into the Report, which recommended that Tenants' coverage applications be granted. We agree.

Because Owner failed to demonstrate that the first floor unit at 665A Fifth Avenue is subject to rent control, it may be counted as the third unit independently occupied during the Window Period. Based on the terms of the Stipulation, the Loft Board finds that the Building is an interim multiple dwelling ("IMD") with two IMD units, one on each of the second and third floors of 657 Fifth Avenue and Tenants are the protected occupants of their respective units.

The Loft Board hereby directs Owner to register the Building as a horizontal multiple dwelling with two covered units, the second and third floors of 657 Fifth Avenue, and Tenants as the protected occupants within 30 days of the mailing date of this Order pursuant to Title 29 of the Rules of the City of New York § 2-05. Failure to do so may result in enforcement proceedings and the imposition of fines.

DATED: May 19, 2016



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Alexandra Fisher  
Chairperson

Board Members Concurring: Carver, Barowitz, Gregory, Fisher, Bolden-Rivera Schachter

Board Members Dissenting: Delaney

Board Members Absent: Shelton

DATE LOFT BOARD ORDER MAILED: **MAY 27 2016**